

1977 February 23

[HADJIANASTASSIOU, A. LOIZOU AND MALACHTOS, JJ.]

COSTAS ASKOTIS,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(Criminal Appeal No. 3766).

*Road traffic—Careless driving—Collision whilst overtaking—Two conflicting versions—Appellant’s version rejected—Trial Judge rightly reached the conclusion that appellant was driving without due care and attention having believed the evidence of the complainant and that of an independent witness.*

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The appellant was convicted of the offence of driving without due care and attention in that he collided with another car whilst overtaking it. Before the trial Court there were two conflicting versions, that of the appellant and that of the complainant and an independent witness. The appellant did not give evidence on oath but in his statement to the Police he denied that he was involved in an accident. The trial Judge rejected the statement of the appellant and believed the evidence of the complainant and an independent witness to the effect that complainant’s car was hit by that of the appellant.

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*Upon appeal against conviction:*

*Held*, that in spite of the fact that the trial Judge has failed to give more reasons, nevertheless, under the circumstances he rightly reached the conclusion that appellant was driving without due care and attention having believed the evidence of the complainant and that of an independent witness; accordingly the appeal must fail.

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*Appeal dismissed.*

**Appeal against conviction.**

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Appeal against conviction by Costas Askotis who was con-

victed on the 10th November, 1976 at the District Court of Nicosia (Criminal Case No. 25315/76) on one count of the offence of driving without due care and attention, contrary to sections 8 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72) and was sentenced by A. Ioannides, D.J. to be bound over in the sum of £50.- for one year to keep the traffic laws and regulations.

*St. Erotokritou (Mrs.)*, for the appellant.

*A.M. Angelides*, Senior Counsel of the Republic, for the respondent.

HADJIANASTASSIOU J. gave the following judgment of the Court. This is an appeal by Costas Askotis against the judgment of a Judge of the District Court of Nicosia, complaining that it was wrongly found by the trial Judge that his motor car FP 274 was involved in an accident with another vehicle EJ 616 and/or that the Judge wrongly failed to consider all the evidence adduced by the prosecution and which was self-conflicting.

On 25th June, 1976, the accused Costas Kyriakou Askotis, a furniture maker of Strovolos, was driving his motor car FP 274 in Santa Roza street and was involved in an accident. According to Police Constable 1267 Costas Kyprianou, the time of the accident was at 11.45 a.m. and after having been informed, he visited the scene. He found the cars EG 173 and EJ 616 there and both drivers were present. The driver of the first car was a certain Leto Ioannidou and of the second a certain Philissa Hadjichanna. He prepared a draft sketch in their presence and later on in the same day he visited the accused and informed him that he was examining a case of an accident. Having shown to him the sketch and having informed him that there was an allegation by the two complainants that he collided with car EJ 616, he denied that he was involved in an accident, but he admitted that he passed from there. On the same day the Police Constable took a statement from him which in English reads as follows:

“I am the registered owner of the car No. FP 274. Today on the 25th June, 1976, and at 11.20 a.m. I was driving the said vehicle from Santa Roza street towards the direction of Griva Digeni Avenue. I do not remember which line of the road I was keeping and I was not following any car.

My speed was about 20 miles per hour. At a point of the road I saw a car stopped in front of me towards the left. I passed it from the right side and, when I entered to the second line of the road, there was a lady on the right hand side of the car which was stopped. As I regularly overtook the said stationary car I heard a bang behind me and I noticed looking in my mirror that there was an accident. I continued driving. There was no collision between my car and the other car. Police Constable 1267 informed me today the 25th June, 1976, and at 14.00 hours that my car was involved in an accident in Santa Roza street when I was taking over the other car. I had not been involved in any accident. I do not agree with any point of the alleged collision which appears on the sketch of the said policeman."

On the contrary, P.W.2 Philissa Hadjichanna told the Court that on the 25th June, 1976, was driving her car EJ 616 in the road of Santa Roza towards the lights of Gavrielides building from the police station of Lykavitos. Her speed was between 20 - 25 miles per hour and she was holding the left hand side of the road. In fact, when she approached the lights near the police of Lykavitos there was a van car which was holding the middle line and she was holding the left line. She overtook the said car and left it on her right behind her in Santa Roza street about 10 - 20 feet. She proceeded about 80 meters and felt a push in the right back part of the car and her car was moved more to the left and in front. Later on she saw the van to pull to her right and to enter in front of her and once again to her right. She applied her brakes in order to stop and in order to avoid colliding with the said car, which was partly in front of her, but she failed to do so. She further added that at the time the other car passed near her she felt a bang on her car, but the van proceeded without stopping and without reducing its speed. She then noticed the number of the van and informed the police. Finally she said that when she stopped, the driver of the vehicle, which was stationary, arrived there. In cross-examination she said that the car EG 173 was about 50 - 60 feet when she saw it for the first time. But, she added, when she was proceeding it was in the centre of the left line of the road, and the van was behind her. When she stopped her car she realized that the back right mudguard was scratched.

According to witness L.to Ioannidou on the same day and at 11.15 a.m. she stopped her car EG 173 outside of a pharmacy on the left hand side of Santa Roza street. She bought certain drugs and when she went to open the door of the driver she  
5 looked to her right and saw a motor vehicle coming towards her. As she was afraid she went in front of the car and mounted the pavement but at the same time the on-coming car hit her car and she noticed that it was pushed forward. Finally she said that when she noticed the other car proceeding towards  
10 her it was 50 meters away. According to Fotios Alkiviadous on 25th June, 1976, he took his car to an electrician at Santa Roza street. He then walked to a nearby pharmacy and he saw a car stopping in the street near that pharmacy and a certain lady entering into her own car. As he stopped he turned to-  
15 wards the road and saw a car to be driven in front and was followed by a van. The first was keeping the left side and the van, which was painted with colour, white, was in the second line. Questioned further, he said that he saw the van approaching the other car and as it was reaching the side of the car  
20 he heard a bang. At that time the car was near the back part of the first one with the front part of the van. He further said that he saw the car in front to change its side and to be driven to the near pavement and afterwards she turned right and hit the stationary car.

25 The trial Judge having dealt with the evidence before him, as well as, with the statement made by the accused to the said police constable made the observation that this statement to the police leaves a lot of questions to be answered, and because he has not elected to give evidence on oath and to be examined,  
30 the questions remained unanswered. Finally, the learned Judge concluded as follows:

35 "In any event and having examined with care the evidence of P.W.2 and P.W.4 and as I have believed their evidence, I have reached the conclusion and I do believe that the car which hit the car of P.W.2 at the time when the accused was overtaking her car and I reject the statement made by him. For these reasons, I find the accused guilty because he was driving without due care and attention."

40 On appeal counsel on behalf of the appellant argued that the trial Judge wrongly had reached the conclusion that vehicle

FP 274 collided with the vehicle EJ 616 and because the Court did not take into consideration the whole of the evidence which has been adduced by the prosecution and failed to find that such evidence was self-contradictory as a whole. We have examined with care the contention of counsel and in spite of the fact that the trial Judge has failed to give more reasons, nevertheless, we think under the circumstances he rightly reached the conclusion - having believed the evidence of Philissa Hadjichanna and that of Fotiou Alkiviadous, an independent witness.

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For these reasons we would dismiss this appeal.

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*Appeal dismissed.*